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BOOK REVIEWS

THE PROBLEM OF PROOF. Especially as Exemplified in Disputed Document Trials.—A Discussion of Various Phases of the Proof of the Facts in a Court of Law, with Some General Comments on the Conduct of Trials—By Albert S. Osborn, Author of "Questioned Documents". Introduction by Professor John Henry Wigmore, Author of "Wigmore on Evidence". (New York and Albany: Matthew Bender & Company, Incorporated. 1922, pp. xxii, 526.)

The scope of this book, the sequel, after twelve years, to the author's valuable work on "Questioned Documents", may, as indicated by the title page above, be described under three heads. "The main purpose", to use the author's own words, "is to help the lawyer who has a case to try, in which it becomes necessary to prove the facts relating to a disputed document". Next is discussed the general problem of proof, irrespective of documents. And lastly, the author offers some general comments on the conduct of trials, based on his observation while present in court as an expert witness on disputed handwriting.

Under the first head, the author differentiates his present book from his work on "Questioned Documents", so highly commended by Professor Pound in 24 Harvard Law Review 413, as follows: "The scientific investigations necessary to the discovery and illustration of the physical evidence in disputed document cases are treated here only incidentally, as an extended discussion of those subjects has been attempted in a previous book." But the author in the present work again and again repeats and enforces his contention in "Questioned Documents", that the handwriting specialist does not, like the medical expert, merely give his opinion to the court or jury. He gives also the *reasons* for his opinion. The facts on which his opinion is based are shown to the court or jury by blackboard or chart, and the tribunal *sees for itself* the grounds of his opinion, which may amount almost to demonstration. Thus the *facts* to which the expert witness testifies concerning the characteristics and construction of the disputed signature are within the field of "real evidence"—*res ipsa loquitur*—and the *opinion* of the expert, after adequate explanations, and calling the attention of the jury to what might otherwise escape their scrutiny, becomes of secondary importance.

But this part of Mr. Osborn's book may soon be compared to Bentham's strictures on the common law doctrines as to the competency of witnesses, of which it has been said that they are "like shells buried beneath the ruins they have made". His reasons for condemning the old rules concerning disputed handwriting which shut out the light, and helped the lawyers who were "against the facts", because the facts were against them, are conclusive. One will only need to look to the latest decisions, "and see how the gospel spreads".

It is in the other portions of Mr. Osborn's book that we have been most interested, the general problem of proof, and the conduct of trials. In the language of Dean Wigmore's Introduction, "there is wisdom on every page", and as Dean Pound said of the previous book, "practicality, in the

best sense of the term, characterizes the entire work". Unfortunately, it is impossible, within the proper limits of a review, to reproduce the weighty observations, the terse and striking apothegms, that pervade the book. It should be read by all who are interested in the practice of law. The author has not practised law, but exemplifies the adage that "the onlooker sees more of the game than those who play".

As to the conduct of trials, Mr. Osborn has been present at trials in thirty-eight States, and has been a close and critical observer. The lawyers might have applied to themselves the advice of Burns:

"If there's a hole in a' your coats,
I rede you tent it:
A chield's amang you taking notes,
And, faith, he'll prent it."

So far as we know, never before has one not a practitioner instructed lawyers as to the proper conduct in court of their cases. But perhaps never before has a student of the law, a specialist witness during many years in many courts, had such an opportunity to observe the conduct of trials. Where this "child among you taking notes" is also a man of keen insight and great ability, the lawyers may well "sit up and take notice" of what he prints. He is not a pessimist. He has commendation as well as criticism of lawyers, and believes that the verdicts of juries are generally right. The tone of his book is so high that a short treatise on legal ethics might be extracted from its pages.

In conclusion, we may observe that Mr. Osborn is justly severe on those lawyers to whom the law is a trade and not a profession, who do not live *for* the law, but live *on* it. And he laments that so many lawyers lack the student spirit, "that attitude of mind which makes practical life a constant course of study". He declares that "of professional men as a class but few attend conventions, but few read technical magazines or books, and it is a rare man who does the first stroke of work in any field of original research. The deadly routine, and the making of the profession a business, and only a business, tends to kill the learning spirit."

To encourage the "learning spirit", Mr. Osborn has appended to his work a Bibliography which he recommends to lawyers. These books number over fifty, they are not technical law books, and they extend from Quintilian to Wigmore's "Principles of Judicial Proof". So far as we are acquainted with these volumes, they are judiciously chosen, and less than the whole of them, read and digested, would make of any lawyer (what he ought to be) a man of cultivation and of charm. And many a time in an unexpected quarter he would find matter of practical use at the bar, for "all is grist that comes to his mill".

Our trouble with Mr. Osborn's book has been that we have been so interested in reading and re-reading it, that we have scarcely found time to review it. He is a man of sound judgment and ripe scholarship, and has solved the problem of candid advice to a great profession, without, we believe, giving just offense to anyone. The Bar would be strengthened and elevated if this book were in the hands of every lawyer in the United States.